THE OFFICE OF SHERIFF IN IOWA

BY

WILLIAM A. JACKSON

A THESIS

SUBMITTED TO THE FACULTY OF THE GRADUATE COLLEGE OF THE STATE UNIVERSITY OF IOWA IN PARTIAL FULFILLMENT OF THE REQUIREMENTS FOR THE DEGREE OF DOCTOR OF PHILOSOPHY

IOWA CITY, IOWA

1924

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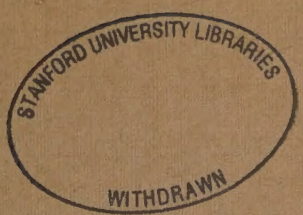

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AUTHOR'S PREFACE

This study is the result of investigation and research in the field of local government and administration. It deals only with that part of the field touching the office of Sheriff.

The first three chapters are purely historical and show that the office of sheriff is descended through the American colonial and territorial periods from England, the place of its origin. The remainder of the thesis deals with the office as it has been and is in Iowa; with a final chapter on suggested reforms.

As it relates to Iowa this study is based upon compiled documents and statutes. Detailed accounts of legislation affecting the office and its administration from the time of the first Iowa territorial legislature to the present have been examined and used.

The early statutes show the office to be one about which were grouped many functions, some of which were improperly related to it. Frequent changes have been made by succeeding lawmaking bodies but the character of this legislation has not kept apace with the newer ideas of efficient government and administration. The main defects in the office are shown to be a lack of responsibility, improper coördination, and a lack of integration. The State is almost wholly dependent upon the office of sheriff for the enforcement of its laws, and yet the chief incumbent of the office is locally elected (thus being politically responsible to the local electorate), has a limited territorial jurisdiction, and is charged with the performance of diverse functions and duties.

Upon the suggestion of Professor Benjamin F. Shambaugh, Head of the Political Science Department of the State University of Iowa this work was undertaken. The author is also indebted to Dr. Kirk H. Porter of the same department and to Dr. Ruth A. Gallaher for reading and editing the manuscript.

WILLIAM A. JACKSON

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THE COUNTY SHERIFF

The office of sheriff is the oldest and one of the most important of all county offices and during the entire period of its existence, from the time of Anglo-Saxon England, throughout the colonial and territorial periods in America, it has been associated with that dependent political subdivison called the county. Indeed the sheriff is frequently called the county sheriff.

The first Constitution submitted to the people of Iowa in 1844 made provision for county officers, including the office of sheriff.[557] This instrument, however, was rejected by the people and the later Constitutions of 1846 and 1857 made no provision for the sheriff, leaving both the creation of the office and its regulation to the legislature. As a result the General Assembly of Iowa has power to make any changes in the office of sheriff that it may see fit and may alter it or even abolish it altogether.

As the sheriff's office is organized to-day his functions may be said to fall into three general groups: the sheriff is the conservator of the peace and the chief law-enforcing officer of the county; he is the servant of the court, serving such processes as warrants, writs, and subpoenas; and he is the keeper of the county prison or jail and has the custody of prisoners committed to it.

The term sheriff as it is used in the Iowa statutes is sometimes given a broad construction. It includes his subordinates, for whose acts he is responsible, and in some of the statutes it is specifically stated that the term sheriff includes other peace officers. This, in most cases, is merely the extension of certain provisions of the law to other officers and does not concern the sheriff's status or functions.[558]

HISTORY OF THE OFFICE

The office of sheriff has back of it a history of more than a thousand years. Few offices have maintained such long-continued existence with such constant importance in the scheme of local government and administration. Its history is still in the making and may yet add to the office many years of existence.

English Period. — The most that can be said concerning the origin and beginnings of the office is that it has its origin in Saxon England and began sometime prior to the tenth century.[559] Its clearly recorded history begins about the time of Edgar, at which time the sheriff was appointed and removable by the king. He was the guardian of the peace, summary court officer, and had judicial, fiscal, and military functions.[560]

Two names appear in the early records that give some clue as to the origin of the name sheriff: *king's gerefa,* or *king's reeve,* and *scir-gerefa,* meaning shire reeve. The term scir or shire was the Saxon name for local governing areas now called counties. A gerefa, meaning reeve, was the king's fiscal agent and keeper of the king's peace. It is likely that the king's reeve of the shire was in time called the shire reeve from which we have to-day the name sheriff.[561]

The Normans found this office existing in England at the time of their conquest in 1066 and they added to its many functions those of the Norman vicomte, an officer whose duties were somewhat similar to those of the sheriff.[562] The office of sheriff reached its greatest development during the early Norman period and about the time of Magna Carta his power began to decline.[563]

About this time the king began sending out justices to hold the county courts and little by little jurisdiction was removed from the hundred courts until they finally ceased to be of any importance. In this way practically all of the judicial power of the sheriff was swept away and with the judicial power went also the decline in fiscal power which, in the main, was

accomplished through the abolition of the old sources of revenue over which the sheriff had control. His military position was completely destroyed through the establishment of the office of Lord Lieutenant.[564]

Because of the importance of this office in England there was a constant struggle over the right of appointment, the crown, the barons, and the shire communities claiming it in turn. In this the crown finally won and the sheriff in England is still generally appointed by the crown, although London and certain other shires secured the right of electing the sheriff.[565]

Colonial Period. — Along with the first appearance of organized government in the English colonies in America there came the office of sheriff. Local governing organizations, however, did not make their appearance until the colonies were firmly established and a permanent growth was assured.

Up to 1633 the political divisions of the colony of Virginia were called hundreds and plantations. In 1634 the name was changed to shire, and since they were to be governed as the shires of England the office of sheriff immediately came into existence.[566] The office did not make its appearance in the middle colonies at such an early date. At any rate, this was true of New York which was composed of ridings each of which was provided with a high constable and under sheriff. Both of these were abolished in 1666 at which time the office of sheriff was created.[567] Seventeen years later when the county organization was set up the office was retained.[568] No early mention is made of the office in the records of the New England colonies. Owing to the nature of the country, its more or less isolated settlements, and the peculiarity of its self-governing local areas, there was no special need for a sheriff.[569] In Massachusetts the duties of the sheriff were performed by a "marshall" who continued to function until 1691 when the office of sheriff was created.[570]

The manner of selection and appointment does not indicate that the sheriff was regarded as a county officer, but rather as a colonial officer whose jurisdiction was the county. In none

of the colonies was the sheriff ever elected by the people. Appointment by the Governor was the general rule, although the procedure varied.[571] The tenure of office for the colonial sheriff was generally one or two years.[572] In New Hampshire, however, tenure was indefinite but there was a provision whereby the Governor could make removals for cause. Thus arbitrary removals were guarded against and at the same time a safeguard was set up against the evils that might occur because of long tenure.[573]

The colonial office of sheriff was never placed upon a salary basis but, unlike the English practice during this same period, some provision was always made for compensation on a fee basis. These fees were usually fixed by law and might be in money or in produce, Virginia, for example, using tobacco as the medium of payment.[574]

The powers and duties of the colonial sheriff were many and varied. He was always the chief peace officer, having the ancient power of posse comitatus. He was also the responsible keeper of the jails, the general executive officer of the court, and chief election and returning officer. In the middle and southern colonies he was also chief fiscal agent or tax collector. In Maryland the sheriff was at one time both tax collector and coroner, while in North Carolina he was ex officio tax assessor, collector, and treasurer.[575]

Territorial Period. — No doubt the pioneer conditions were largely responsible for the position of the sheriff in colonial times. The scarcity of population made him an officer of many functions. Since the maintenance of peace is one of the first duties of organized society, around the peace officer was often built up the whole structure of local government. This was particularly true of the pioneer settlements of the West. Even before the government of the Northwest Territory was regularly set up as provided for by the Northwest Ordinance, a pioneer community at Adelphia, now Marietta, Ohio, founded a government based upon law and elected its sheriff to administer the laws.[576]

While it is not generally true that pioneer communities are settled by renegades, it nevertheless is true that one of the first needs of a frontier community is the establishment and enforcement of law and order. Hence, in the organic act creating the Territory of Wisconsin in 1836 provision was made for the appointment of judicial officers, including justices of the peace and sheriffs.[577] The organic act of 1838, which made Iowa a separate Territory, required the Governor to cause the sheriffs to take a census of the population as a basis for determining representation.[578] By this act also the existing laws of Wisconsin were extended over the Territory of Iowa, "so far as the same be not incompatible with the provisions of this act, subject nevertheless to be altered, modified or repealed by the governor and legislative assembly of the said Territory of Iowa".[579]

The Iowa Assembly, however, was not slow in passing acts of its own. The First Legislative Assembly of the Iowa Territory passed a completely codified act dealing with the office of sheriff. The report of the judicial committee in November, 1839, showed only one act still in force as a holdover from the Michigan and Wisconsin laws dealing with the office of sheriff.[580] In accordance with the provisions of the organic act of Congress the Iowa law made the sheriff an appointive office,[581] but in 1839, Congress passed an act permitting the election of certain officers in the Territories. Among these was the sheriff.[582] The Governor, in his next message to the Assembly, called attention to this act and recommended the passage of a bill to secure the election of all officers possible in the following words:

> This, no doubt, will be a pleasant duty to perform, as it is in strict accordance with the spirit of our institutions. Our government is a government of public sentiment, and I have ever been of the opinion, that the only safe depository of power is with the people. They are the only legitimate sovereigns of the land, and with them should be vested the power of electing all public functionaries from the highest to the lowest degrees. This has ever been my sentiment, and I take pleasure in urging upon the consideration of the legislative assembly,

on the present occasion the passage of a law to provide for the election, by the people, not only the officers above mentioned but all others within the Territory that are not expressly prohibited by the organic law.[583]

The Legislative Assembly made the office of sheriff elective, along with other county offices, and it has been elective ever since.[584] Apparently the arguments of Governor Lucas still hold good in the minds of the legislators and the people in general.[585]

In all there have been used in Iowa five ways of filling the office: first, executive appointment by the Governor; second, election by the voters of the county; third, legislative appointment by the General Assembly; fourth, judicial appointment by the district or county judge; and finally, appointment by the county board of supervisors. Only two of these are used at the present time — election by the qualified voters of the county and appointment by the county board of supervisors. The latter, however, is never used except for the purpose of filling vacancies.[586]

The tenure of the sheriff was fixed by the Territorial assembly at two years and he was given a three-fold position: servant of the court, keeper of the peace, and keeper of the jails. He was also ex officio tax collector, a position which he held until 1847. Only one other change of major importance has been made in the office since the Territorial period: that was a change from the fee basis to the salary basis which was finally and completely accomplished in 1915.[587]

THE STATUS OF THE SHERIFF

Election. — Since the sheriff is elected along with other county officers and under laws which apply to elections generally a complete discussion of his election would involve an analysis of the entire election machinery which is outside the province of this discussion. Only that portion which has a direct bearing on the office will be considered here.

The first step in the election of officers is the nomination of

candidates. Any qualified elector may be nominated for the office of sheriff. Indeed one who is not even a citizen may receive the nomination and have his name presented at the election but he must qualify as an elector before the time to take the oath of office and assume the duties thereof.[588] In addition to being a qualified elector of the State one must also have fulfilled a county residence requirement of three months, which is equivalent to saying that he must be a qualified county elector. Nominations are now generally made through the direct primary.[589] If, however, no candidate for the nomination receives a plurality of thirty-five per cent of the vote cast the nomination may be made by the county convention, in which case the convention must make its selection from those who sought the nomination at the primary.[590] Nominations may also be made by petition.[591] After the nominations have been made the sheriff is elected by the qualified voters of the county, under the State election laws.

Bond and Oath of Office. — Before entering upon the duties of the office of sheriff the person elected or appointed to that office must qualify. This he does by making the bond which is required by law and by taking the oath of office.

The bond is made payable to the State of Iowa and approved by the county board of supervisors.[592] Bonding companies or corporations doing business in the State according to law are now accepted upon the same status as individuals in furnishing security for the office.[593] The county board, in approving the bond, is acting in a judicial capacity and is not responsible for errors of judgment.[594] The minimum bond of the sheriff is five thousand dollars but the county board may require a larger bond if it sees fit. However, if the sheriff's liability exceeds the bond the members of the board are not liable. If the board refuses to approve the sheriff's bond or neglects to do so within the five day period required by law, he may appeal to the judge of the district court, who may, after a hearing upon the refusal, give his own approval which has the same effect as approval by the county board of supervisors.[595]

A temporary officer must give bond in the same way and all officers holding over for any reason whatsoever must qualify anew.[596] If any sheriff enters upon the duties of his office and performs official acts under the name of the office without executing the bond he is guilty of a misdemeanor and liable to a fine not to exceed the amount of his required bond.[597]

The bond having been given, secured, and approved, the sheriff must take the oath of office. The oath is required of every civil officer and is substantially as follows:

I, _____, do solemnly swear that I will support the constitution of the United States and the constitution of the state of Iowa, and that I will faithfully and impartially, to the best of my ability, discharge all the duties of the office of _____ in _____ county _____ as now or hereafter required by law.[598]

After the sheriff has qualified for the office by giving bond and taking the oath of office he is ready to assume the duties of office. This he does on the second secular day in January after his election.[599] If he is appointed he qualifies in the same manner and assumes the duties of office as soon as he has qualified. In cases of reëlection after appointment, the same procedure must be gone through with as in election or appointment of the first instance.[600]

Tenure and Removal. — The tenure of all county officers, including the sheriff, is two years but vacancies are likely to occur at any time. A vacancy in the office of sheriff may occur by reason of resignation, death, removal from office, and neglect or refusal to take the oath of office or give bond. Vacancies also occur when the sheriff ceases to be a resident of the county, in cases of forfeiture of the office under the laws of the State, or upon conviction of crime involving a violation of the oath of office.[601] Incompatibility may also give rise to a vacancy. "Incompatibility in offices exists where the nature and duties of the two offices are such as to render it improper, from consideration of public policy, for one incumbent to retain both."[602] Accordingly the acceptance by the sheriff of any other office in-

compatible with his own would serve to vacate the office of sheriff. A vacancy may be created at any time by the resignation of the sheriff.

The early Iowa sheriff addressed his resignation to the county judge.[603] After the creation of the county board of supervisors this body was given the power to fill vacancies, so all resignations were to be addressed to the board of supervisors.[604] It still makes appointments to fill vacancies but resignations are now addressed to the county auditor and must be made in writing.[605] If the resignation is made in the prescribed manner a vacancy is created whether the resignation is formally accepted or not.[606] The Attorney General, however, has given his opinion that a resignation which is to take effect at some future time may properly be withdrawn before the arrival of that date.[607]

One of the most frequent causes of vacancies in office is removal. Prior to 1909 the law upon the subject of removal of public officials was inadequate. Accordingly in that year the Thirty-third General Assembly passed the so-called Cosson Law which provided that county officers, including the sheriff, might be removed from office by the district court.[608] The causes for removal are designated in the present law as follows; (1) for wilful or habitual neglect or refusal to perform the duties of his office; (2) for wilful misconduct or mal-administration in office; (3) for corruption; (4) for extortion; (5) upon conviction of a felony; (6) for intoxication or upon conviction of being intoxicated.[609]

The law further provides that the accusation shall be filed in the name of the State of Iowa. It may come from any five qualified voters of the county, the county attorney, or the Attorney General. Cases against the sheriff may be prosecuted by the county attorney but, realizing the close connection and collusion that is likely to exist between county officers, the General Assembly added the provision that the Governor, if he deemed it wise, might direct the Attorney General to conduct the prosecution. Furthermore, if the persons filing the com-

plaint have reason to believe that substantial justice can not be obtained before any or all of the trial judges of the district in which the case is filed they are privileged to ask the Supreme Court for a special judge to try the case. Upon receiving the application the Supreme Court, or chief justice thereof, must appoint and commission a special judge to try that particular case.[610]

The proceedings of the trial are summary in nature, as in a court of equity, without the services of a jury. An appeal may be taken to the Supreme Court and all such appeals shall take precedence over all other matters pending before that body. These provisions make it possible to remove an incumbent without having the case drag along until he has finished his term of office. Then, too, the appeal does not stay the execution of the lower court decree by restoring the accused sheriff to his office pending the outcome of the hearing. If the appeal is decided in favor of the accused he is entitled to a reasonable compensation for time, trouble, and actual expense in making his defense. If the original complaint is filed by individuals they are liable for the costs if, in the opinion of the court, there was no reasonable grounds for the complaint.[611] Aside from the causes of removal as designated in the Cosson Law, the sheriff may be "suspended or removed" for failure to provide properly for prisoners left in his care.[612]

The sheriff has always been more or less a "free lance" in government, responsible to nobody in particular, but this has been somewhat modified in Iowa by the Cosson Law which is the basis for the removal procedure just described. The provisions of this act now apply to appointive as well as elective offices, so it could be used on any appointee of the county board of supervisors or any member of the sheriff's force.[613]

The Sheriff's Force. — The duties of any office are likely at any time to become so numerous and varied that an assistant or deputy is required. A second reason for the deputy sheriff grows out of the necessity of some provisions for the execution of the duties of office when the principal is unable to serve.

Finally, since it is the duty of the sheriff to keep the peace he may sometimes require the services of a comparatively large force, as in time of riot or uprising.

Each sheriff must appoint one deputy and, with the approval of the county board of supervisors, may appoint additional deputies. These deputies can not hold any other county office and must give bond and take oath in the same manner as the sheriff, the bond and securities being approved in like manner.[614] The sheriff may revoke the appointment of a deputy by filing a written notice of revocation in the auditor's office.

The deputy sheriff is not an officer. "He has no original power, but acts as the representative or agent of the sheriff, who is his principal, and who is responsible for the manner in which he performs the duty assigned to him."[615] The bond of the deputy is for the protection of his principal and not for the protection of individuals. The individual has his remedy against the sheriff and the sheriff against the deputy.[616] The acts of the deputy are in law the acts of the sheriff, and any interest that would prevent the sheriff from acting will also prevent his deputy from acting.[617] The deputy not only acts for and under the direction of his principal but for and in the place of his principal during his absence or disability.[618] The suspension or removal of the sheriff from office, however, is not a disability that will authorize the deputy to act. In this case action would be by the appointee of the county board of supervisors, or, in the event that no appointment has been made, by the coroner.[619]

Each deputy sheriff receives a salary determined by law and based upon the population of the county. In counties with less than fifty thousand inhabitants and in any county where the district court is held in but one place the deputy sheriff receives a salary not to exceed $1500, the exact sum to be fixed by the board of supervisors. In counties with over fifty thousand population the chief deputy is to receive sixty-five per cent of the amount of the salary of the sheriff unless this sum exceeds $1800 which is the maximum. In any county where the district

court is held in two places the chief deputy and any deputy other than the chief deputy in charge of the office where such court is held outside the county seat are to receive sixty-five per cent of the amount of the salary of the sheriff.[620] Special deputies and bailiffs are usually paid on a per diem basis, from three to five dollars per day. The number and compensation of deputies shall be fixed by the county board of supervisors, within limitations prescribed by law and the salaries of all deputies shall be paid by the county. No deputy may act as attorney or counsel in any court nor may any deputy purchase property, either directly or indirectly, when it is exposed for sale by himself or his principal.[621]

The sheriff's force includes also bailiffs and jailers, who have the status of deputies although their duties are somewhat specialized. The sheriff himself is responsible for the keeping of the jail but he may keep it through a deputy called the jailer. The sheriff is also the servant of the court but he usually serves the court through special deputies called bailiffs.[622]

From the beginning of the office the sheriff has had the power of posse comitatus, that is, the power of summoning to his aid the man power of the county. The potential force of the sheriff, then, is every able bodied person in the county. The latest expression of the Iowa General Assembly on this point was a law enacted in 1909 which reads as follows: "The sheriff by himself or deputy may call any person to his aid to keep the peace or prevent crime, or to arrest any person liable thereto, or to execute process of law; and when necessary, the sheriff may summon the power of the county."[623]

Compensation. — The fee system for compensating county officers was adopted in Iowa during the Territorial period and has been a subject of much legislation ever since. The fees are no longer the basis for present day compensation although they are still charged and collected as a part of the cost paid by persons to whom service is rendered.

The sheriff now retains only two fees — the mileage fee and the fee for the care and keeping of prisoners.[624] These are not

supposed to affect his compensation at all, the mileage fee being used to cover the actual cost of traveling and the prisoners fee to cover the actual cost of lodging, caring for, and feeding of prisoners. The compensation is now an annual salary which is paid by the county without regard to the proceeds of the office.

The following salary schedule is now in effect: counties of less than fifteen thousand population, $1700.00 annually; counties of fifteen to twenty thousand population, $1800.00; counties of twenty to twenty-five thousand population, $1900.00; counties of twenty-five to thirty-five thousand population, $2000.00; counties of thirty-five to forty thousand population, $2100.00; counties of forty to fifty thousand population, $2200.00; counties of fifty to fifty-eight thousand population, $2400.00; counties of fifty-eight to sixty-five thousand population, $2600.00; counties of sixty-five thousand and over, $2800.00.

An additional sum of three hundred dollars per year is allowed in counties where district court is held in two places and an additional three hundred dollars per year is allowed in counties which do not furnish the sheriff with a residence.[625]

No provision has ever been made for retirement compensation and not until the Fortieth General Assembly was there any provision for bringing the office under the workman's compensation act. At that time it was enacted that a sheriff, marshal, constable, or their deputies shall receive the maximum compensation out of the general funds of the State, as under the workman's compensation act, for injury, disability or death incurred in line of duty as a peace officer.[626]

FUNCTIONS, POWERS, DUTIES, AND RESPONSIBILITIES

The sheriff is the servant of the court, the chief peace officer, the custodian of prisoners, and has a number of miscellaneous powers and duties.

Servant of the Court. — The word servant conveys the idea of one who serves or waits upon and a servant of the court is

one who waits upon the court to do its bidding. This the sheriff does, either by himself or a deputy. The law concerning this function reads as follows: "The sheriff shall attend upon the district court of his county, and while it remains in session he shall be allowed the assistance of such number of bailiffs as the judge may direct."[627] At present the only court with which the sheriff is greatly concerned is the district court of his county, but he may be required by the justice court to perform the duties of a constable, or by the superior court to perform the duties of a city marshal, while the sheriff of Polk County may still be called upon to serve the Supreme Court. In fact, the municipal courts are the only ones with which the sheriff has no legal connection.[628]

Practically all of his powers and duties as servant of the district court are now exercised in connection with the service and return of process. The fact that executions of judgment are placed in his hands has sometimes given to him the name of "executive officer of the court", but in this respect he is not an executive officer but an administrative officer. The general legal provision having to do with the sheriff's powers and duties in the service and return of process is as follows: "The sheriff shall, by himself or deputy, execute and return all writs and other legal process issued by legal authority to him directed."[629] "Process" has been defined by the court to mean "a writ, warrant, subpoena or other formal writing issued by authority of law."[630]

A subpoena is the form of process that is used to secure witnesses or persons from whom the court or some magistrate desires to secure information. Subpoenas are issued by the clerk of the court in both civil and criminal cases, but for witnesses in contested election cases they may be issued either by the clerk or by the county auditor.[631] In fact, any officer or board authorized to hear evidence has authority to subpoena witnesses and compel them to attend and testify in the same manner as officers authorized to take depositions.[632] The sheriff, then, being an officer, may subpoena his own witnesses and does do so for pur-

poses of condemnation proceedings and appraising the value of property.

The vast majority of subpoenas served by the sheriff are for the purpose of securing witnesses for the court or grand jury and for securing jurymen. All subpoenas delivered to the sheriff must be served by him without delay. In criminal action service consists of reading or offering to read the original subpoena to the witness and leaving a copy with him. He is required to make a written return, stating the time, place, and manner of service, which return is filed with the clerk of the court.[633] If the witness upon whom the sheriff or any other peace officer is ordered to serve a subpoena conceals himself, the officer may use whatever force is necessary to effect the service. If he makes known his mission and then is refused admittance, he may break into any building or any other place in order to serve the process.[634]

Another type of process used is the writ, of which there are several forms, one of the most famous of which is the writ of habeas corpus. When this writ is allowed by the court it must come through the clerk, but it may come from any judge without going through the clerk's office. It is directed to the sheriff commanding him to produce the body of a person designated, and he must produce the body or show good cause why he can not do so.[635]

Another writ which the sheriff is more frequently called upon to execute is that of replevin. In an action of replevin writs are issued by the clerk of the court or by a justice of the peace, under the seal of the court, if it is a court of record. Such a writ must be executed by taking possession of the property wherever it can be found. Duplicate writs may be used if necessary to trace property that has been removed. The sheriff must return the writ from whence it came, on or before the time indicated or at the opening of court, with a statement of what has been done, describing fully any property taken under it.[636]

The writ of attachment is frequently issued by the clerk of the court and directed to the sheriff, requiring that he attach certain property of the defendant, the amount or value of which is stated in the writ. Its object is to cause the sheriff to seize and hold the property pending court action. "The sheriff shall in all cases attach the amount of property directed, if sufficient, not exempt from execution, is found in his county, giving that in which the defendant has a legal and unquestionable title a preference over that in which his title is doubtful or only equitable." It is lawful for the sheriff to serve this writ on Sunday if the plaintiff is in danger of losing his claim by delay.[637]

Any attachment levy made by the sheriff which is secured by fraud is void.[638] The same is true if he goes outside of his county in levying the attachment, but several writs may be issued by the district court to several counties, and where property has been moved the sheriff may follow it into an adjoining county if he does so within twenty-four hours after removal.[639] If the defendant does not wish the property to be held under a writ he may make bond to the plaintiff for its value. If the parties are unable to agree upon this amount it is the duty of the sheriff to summon two disinterested persons having the qualifications of jurors to decide, he himself acting as the third juror in case of a disagreement.[640]

If it be shown to the satisfaction of a sheriff's jury of inquiry, or, upon the agreement of both parties, that the property attached may be in danger of deterioration or decay, or the expense of holding it may materially decrease its value, the sheriff conducts a sale of the property and holds the proceeds instead.[641]

If writs of attachment are served by the sheriff in the interest of the State and the sheriff is later held liable by reason of a wrongful execution, the amount of any judgment rendered against him becomes a valid claim against the State, which upon proper proof is paid by the auditor. The sheriff may be protected from liability in other cases by requiring the plaintiff to give bond covering any liability he may incur. His return must show just what has been done; it must describe the property

and show what disposition was made of it. The description should be sufficiently clear to identify and locate the property. The return should be made immediately after sufficient property, or all the sheriff can find, has been attached, or not later than the first day of the first term of court at which the defendant is supposed to appear.[642] A defective return, however, does not invalidate the writ nor the proceedings thereunder.[643]

Closely associated with the writ of attachment is that of garnishment — in fact garnishment is simply a mode of attachment,[644] and no sheriff is authorized to garnish unless he has a writ of attachment. In serving the writ of attachment he shall "garnish such persons as the plaintiff may direct as supposed debtors, or having in possession property of the principal defendant, which shall be effected by a notice served in a manner and as an original notice in civil actions, forbidding his paying any debt owing such defendant, due or to become due, and requiring him to retain possession of all property of the defendant in his hands or under his control, to the end that the same may be dealt with according to law".[645] The sheriff must upon written direction of the plaintiff, or may upon his own motion, ask and receive answers to the following questions:

1. Are you in any manner indebted to the defendant in this suit, or do you owe him money or property which is not yet due? If so, state the particulars.

2. Have you in your possession or under your control any property, rights or credits of the said defendants? If so, what is the value of the same? State all particulars.

3. Do you know of any debt owing the said defendant, whether due or not due, or any property, rights or credits belonging to him and now in possession or under the control of others? If so, state the particulars.[646]

Judgments of the court are usually enforced by writs of execution. Such writs are issued by the clerk of the court and may be directed to the sheriff. If turned over to him he may be required to give a receipt therefor stating the time received. The return upon such a writ must include any money collected,

and must be made on or before the seventieth day from the day it was issued.[647]

In order to execute the writ and make the proper return it may be necessary for the sheriff to conduct a sale of property. This is known as the sheriff's sale. He must give four weeks notice of the time and place of selling real property and three weeks notice of the time and place of selling personal property. This notice is given by posting, which shall be done in at least three public places in the county, one of which must be where the last district court was held. If the sale is of real estate or personal property amounting to two hundred dollars or more there must also be two weekly publications in some newspaper of the county.[648] If the person against whom the levy and sale is made is in actual occupation or possession of any part of the land the sheriff must also notify him of the time and place of the sale at least twenty days before it takes place; otherwise the sale may be set aside by the court.[649] No such notice is required, however, where the defendant is not personally in possession or in actual occupation of the property.[650]

The hour of the commencement of the sale must be stated in the notice and the sale itself must take place at public auction some time between 9 a. m., and 4 p. m. The sheriff, however, may postpone the sale, if in his judgment the price offered is too low, or, in the event that there are no bidders at all. If the sale is postponed it may not be for a longer period than three days without another notice.[651] This adjournment or postponement of a sale by the sheriff is not an arbitrary power but one which if exercised by him at all must be fair and impartial and for the good of all parties concerned.[652]

After the sale of the property the amount necessary to satisfy the judgment is paid over to the plaintiff by the sheriff. Any amount over and above that which is necessary to satisfy such judgment must be paid to the defendant, unless the sheriff has in his hands other executions, in which event he must turn the surplus over to the clerk of the district court to be applied as the court may direct.[653]

If the property sold by the sheriff is subject to redemption he must give to the purchaser a certificate describing the property and the amount of money paid for it, and a statement to the effect that the purchaser is entitled to a deed within one year after the date of sale unless the property is redeemed prior to the expiration of that time. If the property is not redeemable the sheriff must execute a deed to the purchaser at the time of sale. In the case of a redeemable property, if it is not redeemed within one year the sheriff who is in office at the end of that time must execute the deed to the buyer of the property or to some other person designated by the buyer.[654]

Another form of process with which the sheriff has to deal is the warrant. It has been defined by the New York Supreme Court as "a writing from a competent authority, in pursuance of law, directing the doing of an act, and addressed to an officer or person competent to do the act, and affording him protection from damage if he does do it."[655] There are several kinds, such as warrants of execution, warrants of arrest, bench warrants, and search warrants.

Warrants are used in turning insane persons over to the sheriff. Execution in this case consists of delivering the person to the superintendent of the hospital, securing his signature, and returning the process to the clerk of the body from which it issued.[656] Warrants to bring about the seizure of boats or rafts may be issued by any justice of the peace or clerk of any court. Their execution consists of making the seizure, which may be made by serving notice on the owner or commanding officer or posting the notice in some conspicuous place on the boat.[657] Death warrants, when they come from the court, consist of a certified copy of the judgment. If the judgment, for any reason, has not been executed on the day appointed by the court the Governor may issue a warrant under the seal of the State. It is directed to the sheriff who must in person or by his deputy hang the condemned person by the neck until dead. A proper return of execution consists of a certificate made out

by the sheriff after execution, one copy of which is filed with the clerk and another published in a newspaper in the county.[658]

Warrants for the arrest of persons may be issued by any magistrate. They may be directed to the sheriff or any other peace officer and may be served in any part of the State. Bench warrants are used to secure arrests after indictment. A bench warrant is ordered by the judge, through the county attorney, and issued by the clerk of the court to the sheriff who serves it by making the indicated arrest. The same process is directed to the sheriff and executed in the same manner if the defendant is out on bail and does not appear before the court at the appointed time.[659]

Still another kind of warrant which may be directed to the sheriff for service and return is a search warrant. It is "an order in writing, in the name of the state, signed by a magistrate, directed to a peace officer, commanding him to search for personal property, and bring it before the magistrate."[660] Its use is somewhat limited by the Iowa Constitution which provides that "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable seizures and searches, shall not be violated; and no warrant shall issue but on probable cause, supported by oath or affirmation, particularly describing the place to be searched, and the persons and things to be seized."[661] The return of service upon a search warrant must be made to the magistrate issuing it within ten days after its date and must be accompanied by a complete inventory of all property taken by the sheriff, supported by oath.[662]

Peace Officer. — In addition to his duties as the servant of the court the sheriff is also a peace officer. The present general provision relative to his powers and duties as a peace officer was passed by the Thirty-third General Assembly in 1909. "It shall be the duty of the sheriff, by himself or deputy, to preserve the peace in his county, to ferret out crime, to apprehend and arrest all criminals, and in so far as it is within his power, to secure evidence of all crimes committed in his county and present the

same to the county attorney and the grand jury; to file informations against all persons who he knows, or has reason to believe, have violated the laws of the state, and to perform all other duties pertaining to the office of sheriff or enjoined upon him by law.'' [663]

This provision, while still general, is much more specific in its requirements than any in force before this date; previous laws simply stated that the sheriff is the conservator of the peace, and in order to keep the peace he might summon the power of the county.[664] In addition to making this general provision more specific, the law of 1909, which is also the present law, reads: ''The sheriff shall, whenever directed so to do in writing by the county attorney, make special investigation of any alleged infraction of the law within his county, and report with reference thereto within a reasonable time to such county attorney.''[665]

The sections of this act are intended to make the sheriff a more active peace officer. He is not merely to sit in his office and wait for some one to report a crime but is to make investigations of his own accord or under the direction of the county attorney and do all he can to prevent crime. It is his business to see to it that the State's laws are enforced in his county, and according to the opinion of the Attorney General the county in this connection includes also the jurisdictions of the cities within its boundaries.[666]

The principal part of the sheriff's duty as a peace officer consists in making arrests. It has already been explained that arrests may be made in the service and return of process but they also occur in connection with the sheriff's powers and duties as a peace officer.

The Iowa codes define arrest as ''the taking of a person into custody when and in the manner authorized by law, and may be made at any time of any day or night.'' [667] An arrest may be made with or without a warrant. When made without a warrant it must be for a public offense committed or attempted in the officer's presence, or in cases where there is reasonable ground

for believing that the person arrested committed a public offense. Arrests may also be made upon the oral order of a magistrate, if anyone attempts to commit or does commit a crime in his presence.[668] When no warrant is used for making an arrest the sheriff must always have reasonable ground for believing that a public offense has been committed. This, of course, is a matter of fact and if contested must be determined by a jury; but if the sheriff makes an arrest, using a warrant, and arrests the wrong person, it is no defense for him to say that the facts in the case would have justified an arrest without a warrant.[669]

In making an arrest, the sheriff may use as much force as is necessary to overcome any resistance that may be offered: he may break into a house or public building, if he has been refused admission after having made known his errand; or, if necessary, he may call upon any person or persons to aid him, and persons so called upon are guilty of a misdemeanor if they refuse to obey the sheriff's summons. If a prisoner escapes from the custody of the sheriff he may be immediately pursued to any part of the State without further process and any force may be used or aid required that could lawfully have been used in the first instance.[670]

The arrest having been made, it is the duty of the sheriff to take from the arrested person all offensive weapons which he may have on his person and deliver them along with the prisoner to the proper magistrate. If a warrant is used in making the arrest the disposition of the prisoner depends upon its nature and content. "If the offense stated in the warrant be a felony, the officer making the arrest must take the defendant before the magistrate who issued it at the place mentioned in the command thereof, or, in the event of his absence or inability to act, before the nearest or most accessible magistrate in the county in which it was issued." If the sheriff makes an arrest without a warrant he must, without delay, take the person arrested before the nearest or most accessible magistrate in the county where the arrest was made and state to him on oath the cause for making the arrest.[671]

The other powers and duties of the sheriff as peace officer are miscellaneous, such as taking measures to disperse mobs or quell riots, enforcing the prohibition laws, enforcing the law against vagrancy, aiding United States government inspectors, and aiding certain State institutions in their efforts to maintain control or supervision over their wards.[672]

Keeper of the Jail. — Each county is required to keep a jail, which is usually located in or conveniently near the courthouse. It is in charge of the sheriff and is used as a prison for the detention of persons awaiting trial or examination, for the detention of persons committed by the court to make certain their attendance as witnesses in the trial of criminal cases, and for the confinement of persons under sentence of conviction or other commitment. It may also be used for the detention of persons held under Federal authority or under the authority of any municipality.[673]

The general legal provision relative to the sheriff's jail powers and duties is as follows: "The sheriff shall have charge and custody of the prisoners in the jail or other prisons of his county, and shall receive those lawfully committed, and keep them until discharged by law."[674] As a matter of fact the sheriff's residence is usually connected with the jail and he and his family live there, the sheriff's wife or some member of the family performing the routine duties of jailer.

It is the sheriff's duty to keep a true and exact calendar of all prisoners who have been committed to his care and keeping. This calendar shall, according to law, contain the following information: (1) the names of all persons committed; (2) the place of their former abode; (3) the time of commitment of each prisoner; (4) the time of discharge of each prisoner; (5) the authority that committed each prisoner; (6) a description of the person of each prisoner; (7) a record of their former occupations; (8) a record of the education and general habits of each; (9) by what authority each prisoner was discharged. If there have been any escapes the time and manner of such escapes must also be made a part of the record. This calendar must

be presented by the sheriff to the judge of the district court in his county at the opening of each term of court.[675] It is required in order that the judge may make up his docket and to prevent the sheriff from holding persons over a long period of time without giving them an opportunity to be heard.

It is the keeper's duty, whether he be the sheriff or some person acting for the sheriff, to see that the jail is kept clean and sanitary and that the prisoners receive the proper attention as to personal cleanliness and health; also that they receive a sufficient quantity of wholesome food and water. Care must also be exercised that the prisoners' lives be not endangered by fire.[676] Certain prisoners must be accorded special treatment. This relates chiefly to women, children, and defectives. The law requires that separate quarters must be provided in all jails for female prisoners. Likewise, children under the age of eighteen years must be kept in separate quarters from prisoners of more mature age, provided such apartments have been secured in the construction of jails. This law has been in force since 1896, but it is doubtful whether or not it is effective. In the first place, such quarters have not been provided in the construction of jails; and in the second place, the sheriff may use his own discretion as to whether or not the moral tone and fiber of the under age prisoner warrants separate confinement.[677]

The discipline of prisoners and the labor which they perform are largely in the hands of the sheriff. If any prisoner is obstreperous, disorderly, or shows a spirit of vandalism he may be kept in solitary confinement for periods of ten days, on a diet of bread and water, as long as the condition of his health will permit. Those who attempt to escape may be dealt with in the same manner, and the time for which they are thus confined shall be added by the sheriff to the total time for which the prisoner is under sentence.[678]

Prisoners who have been tried and convicted of minor crimes and misdemeanors may be sentenced to jail with the added penalty of "hard labor". Such labor may be required "on the

streets or public roads, on or about public buildings or grounds, or at such other places in the county where confined, and during such reasonable time of day, as the person having charge of the prisoners may direct, not exceeding eight hours each day.'' This work is superintended by the sheriff who must furnish the necessary equipment such as tools and machinery, and under no condition may he lease the prisoners for such labor. This latter provision, however does not apply to vagrants held in the county jail. They may be turned over to the municipal authorities of any city or town.[679]

The sheriff does not have to inquire into the person's age or other limitations upon labor, when a judgment of ''hard labor'' has been passed by a court of general jurisdiction. The judgment sets up a presumption in favor of the sheriff.[680] Whether at work or not the prisoners are not to be treated in a cruel or inhuman manner. This restriction, however, is too indefinite to be of much practical value. Perhaps it should be so, to give the sheriff as penal officer more latitude in dealing with incorrigibles.[681]

Provision has been made in the Iowa statutes for the inspection of jails and the sheriff is required to aid the inspectors. A strict observance of all the obligations connected with jail inspections would insure as efficient management as the present system will admit.[682]

Miscellaneous Powers and Duties. — The legal basis for the miscellaneous powers and duties of the sheriff is contained in the statement ''and to perform all other duties pertaining to the office of sheriff, or enjoined upon him by law.''[683] Some of these duties are non-recurring, that is, they are performed once and the occasion for a repetition of the performance seldom or never arises. For example, in 1858, the sheriff of Marshall County was required to take a census of the Pottawattamie tribe of Indians living in that county.

The Territorial sheriff was required to conduct the sale of goods for the payment of delinquent taxes, but the First General Assembly made the county recorder ex officio county treas-

urer and imposed upon him the duty of selling goods for the payment of taxes. Since then this duty has always belonged to the treasurer but he may still place the collection of delinquent taxes in the hands of the sheriff when it is necessary to make collection by distress and sale.[684]

The sheriff still conducts certain sales at auction. In addition to selling goods and real estate pursuant to court order, he may be called upon to conduct the sale of property which has been found and not claimed by the owner. He also has a very important duty to perform in connection with condemnation proceedings — the taking of private property for public use under the right of eminent domain. The jury of six freeholders which assesses the damage or determines the amount of compensation is selected by the sheriff and all money payments are turned over to and administered by him.[685]

Contested county election cases in Iowa call for special procedure. The court or presiding judge before whom these contests are heard may require the presence of the sheriff whenever it is deemed necessary. All papers are directed to him for service and it is he who enforces the decisions of the election tribunal. If the successful party in the contest is not in office it is the sheriff's duty to put him into possession of the office at once, and deliver to him all books, papers, records, and other possessions appurtenant to the office.[686]

Another miscellaneous power which the sheriff has is the issuing of permits to carry concealed weapons. Such permits, however, are now issued only upon the request of the mayor or some other peace officer and only for a limited time. He also has the authority to issue permits for the sale of concealed weapons, but a record of all such permits must be filed with the county recorder.[687] Finally, aid must be rendered by the sheriff in the enforcement of special statutes such as the child labor law, the fish and game law, and motor vehicle laws.[688]

Responsibility and Liability. — The sheriff as an officer is responsible to no superior in office, but he does not escape responsibility and liability. Political responsibility grows out

of the fact that he is a popularly elected officer, and as such is responsible to the electorate. If, in the opinion of the electorate, he performs his duties well there is usually very little difficulty in securing a reëlection and continuance in office. Until 1909 there was no way of enforcing political responsibility while in office except through criminal process. Removals for cause may now be secured more easily, thus bringing about a greater measure of responsibility to the electorate. Inefficiency is now a cause for removal, and proceedings may be instituted by the voters to secure removal. The proceedings, however, are still legal and not political.

The office of sheriff carries with it all of the common law liabilities, except in cases where they have been modified or removed by statute. The sheriff is both civilly and criminally liable. His common law criminal liability, however, is very limited.[689] His civil liability, under the common law, extends to misfeasance, malfeasance, and non-feasance in office and includes such cases as failure to execute process, insufficient levy, defective levy, abuse of process, wrongful taking of property, not caring for property in his custody, improper release of property in his custody, failure to produce property according to writ, wrongful sale of property, failure to return process, making a false return, and for all torts such as assault and false imprisonment.[690]

The Iowa statutes have materially increased the sheriff's criminal liability, the list of misdemeanors being particularly long. For example, every sheriff is required by law to make a quarterly report of fees collected and failure to make such report is a misdemeanor. The same is true if he fails to give information to the Governor or either house of the General Assembly when called upon, if he acts as agent, attorney, or solicitor for any person in a matter pending before the county board of supervisors, if he acts as attorney or counsel for any party before a court, or, if he purchases, either directly or indirectly, any property offered by him for sale under process of law.[691]

Other misdemeanors consist of failure to publish required notices in the English language, wilfully exceeding his authority or exercising it with unnecessary severity, intentional failure to perform his duty in securing a jury, or discharging this duty in a corrupt manner. This last offense carries with it a penalty of imprisonment for a minimum period of six months and a maximum of one year.[692] For overcharging fees he is liable to a fine not exceeding one hundred dollars, or imprisonment in the county jail not exceeding six months for each offense. Likewise, the misappropriation of fees and making false entries are misdemeanors which may be punished by fine or imprisonment.[693]

The penalties for voluntarily suffering prisoners to escape are very severe, ranging all the way from ten years in the penitentiary to a jail sentence or fine, depending upon the nature of the offense for which the prisoner was confined. For not returning a copy of the jail calendar as required by law, if the failure is due to neglect or refusal, the sheriff is punishable by a fine not exceeding one hundred dollars. Cruel or inhuman treatment of prisoners is also punishable by a fine not exceeding one thousand dollars, or by imprisonment in the county jail not exceeding twelve months, or both.[694]

Bribery has always been an offense punishable under the Iowa statutes by fine or imprisonment. "If any sheriff . . . . receive from a defendant, or other person, any money or other valuable thing as a consideration or inducement for omitting or delaying to arrest any defendant or to carry him before a magistrate or to prison, or for postponing, delaying, or neglecting the sale of property on execution, or for omitting or delaying to perform any other duty pertaining to his office, he shall be fined not exceeding five hundred dollars, or imprisoned in the county jail not exceeding six months, or both fined and imprisoned, at the discretion of the court." Accepting a reward for the performance of a public duty has been placed on the same status as bribery and may be punished by fine or imprisonment.[695]

A sheriff may be subject to both criminal and civil liability for the same offense. If he, by color of his office, uses oppression under the pretense of acting in his official capacity he may be fined a maximum of one thousand dollars and imprisoned in the county jail not exceeding one year, and is also liable to the aggrieved party for any damage that may have resulted as a consequence of the illegal act. Disobedience of the command of any process, if issued by a court, is contempt of court and in addition to any punishment that may be imposed by the court the sheriff may be proceeded against by any person who is injured as a consequence of such disobedience. If any sheriff be found guilty of stirring up a quarrel or legal action between persons with the intention of injuring them he may be fined not to exceed five hundred dollars, and is also liable to the injured person in treble damages.[696]

In the service of process the sheriff is sometimes required to levy execution upon the personal property of a defendant. For such levy he incurs no liability unless he receives a written notice that the property belongs to a third person.[697] The proper procedure is for the sheriff, upon the receipt of such a notice, to require of the plaintiff an indemnifying bond which protects him from liability that may be incurred upon proceeding with the execution. In proceeding with the execution sale the sheriff is required to give certain notices before the actual sale takes place. The failure on his part to comply in this respect does not affect the validity of the sale but it does make him liable to the forfeiture of one hundred dollars to the defendant in execution and any damages that may be sustained by either party to the action.[698] The State Supreme Court has held, however, that where the sheriff sells property under execution, without notice, for a sum equal to its value, and the owner suffers no real damage by the action, he is not entitled to recover from the officer the penalty for failure to give proper notice of the sale.[699]

Every sheriff is liable on his bond for the faithful performance of his duty. Bonds are now made payable to the State

but that does not mean that the State would have to be a party to the action against the securities. An officer's bond is supposed to cover any liability that may be incurred by him while in office and acting as an official.

ADMINISTRATION OF THE OFFICE

Any treatment of the actual administration of an office takes into account both the law and the every day operation under the law. This does not mean that the actual operation is in violation of the law but no law is specific or detailed enough to include actual operation. The administration of the office of sheriff lends itself to a consideration under the following heads: personnel, financial administration, jail administration, service and return of process, administration in relation to city police systems, and succession in office.

Personnel. — The office of sheriff is filled from the rank and file of the qualified electors of each county. The principal officer, the sheriff, is nominated through the operation of the party primaries and is elected at the general election. Primary ballots from sixty-eight counties in 1920 show that it was the most sought after of all the county offices. The sheriff's force — deputies, bailiffs, and jailers — are appointed by the sheriff and are under his personal direction.[700]

Technical training is not included in the legal qualifications but few men enter the office without some previous experience as a peace officer and those who do usually retain the services of an experienced deputy to enable them to perform the duties of the office without too great loss of time. The other deputies are usually appointed from among the sheriff's personal friends without regard to their special qualifications.

Discipline is maintained in the office through removal, which under the Cosson Law can be made very effective. Within the office, however, discipline is largely in the hands of the sheriff who has the power to remove any of his deputies by revoking the appointment. Such revocation is made in writing and filed with the county auditor.[701]

The majority of the county boards of supervisors require of the sheriff a larger bond than the minimum, which is fixed by law at five thousand dollars. Only thirty-nine counties use the minimum. Forty-four counties fix the bond at ten thousand dollars while one has fixed the sum of fifty thousand. The average bond for the sheriff is a little less than ten thousand dollars and the average bond for the first deputies is a little in excess of twenty-five hundred dollars. The majority of these bonds for both the sheriff and his deputies are secured by individuals rather than by corporations. The bonds of special deputies and deputies without compensation, when required at all, are usually five hundred dollars which is the minimum for any deputy.

Financial Administration. — The Iowa law seems very specific in regard to the fees of the office. All fees must be accounted for by the sheriff, except mileage fees and allowances for the care of prisoners, and all fees collected by him must be paid to the treasurer quarterly. "When a sheriff goes out of office, he shall deliver to his successor all books and papers pertaining to the office, and property attached and levied upon, except as provided in the preceding section, and all prisoners in the jail, and take his receipt specifying the same, and such receipt shall be sufficient indemnity to the person taking it." The exception referred to in this quotation has to do with process in the hands of the sheriff at the time of expiration of his term of office. He may proceed to execute such process in the same manner as though his term had not expired. Any new process, however, is always directed to the new sheriff.[702]

Strangely enough there is nothing in these provisions which could be construed as an absolute requirement for the old sheriff to turn over to his successor all money held by him as the result of condemnation proceedings, nor of his release on his bonds if he did so. The State Auditor in his report in 1922 recommended the enactment of a law that would require the sheriff to turn over such money to his successor and that the law be made retroactive so as to include money held by ex-sheriffs. In

support of this recommendation the Auditor said: "As it now is there is no statute expressly governing this matter, and we know of one instance where an ex-sheriff on August 2, 1921, had a balance of over $11,000.00 of condemnation money on hand. The money awarded in a condemnation proceedings is paid to the sheriff, not as an individual, but in his official capacity as sheriff and he should be required by statute to turn it over to his successor." [703]

This recommendation bore fruit, and in 1923 the General Assembly passed a law embodying the chief recommendations of the State Auditor.[704] In all condemnation cases where the adjudication is final the sheriff pays over the money held on January first of each year to the county treasurer who gives the sheriff a detailed receipt; in all other cases — that is where adjudication is not complete — the retiring sheriff must turn over to his successor in office all condemnation funds in his hands at the time of expiration. The law, however, provides no penalty for his refusal. Presumably its enforcement would be by mandamus and contempt proceedings.

The Fortieth General Assembly further affected the financial administration of the office. Until 1923 there has always been a fee for collecting and paying over money on what is commonly called execution sales. This fee was fixed by the Thirty-seventh General Assembly at two per cent on the first five hundred dollars collected and paid over, one per cent on amounts between five hundred dollars and five thousand dollars, and one-half of one per cent on amounts exceeding five thousand dollars. The Fortieth General Assembly was convinced that the year 1923 would witness many sheriff's sales of land, and in order to lighten a possible burden upon the farmers the execution sales fee was abolished. This law was made retroactive in effect and was upheld by the Attorney General in his report.[705]

The sheriff's fee bill now includes fifteen items, whereas before the office was placed upon a salary basis it included more than twenty items. The abolition of the execution sales fee further widened the gap between receipts and expenditures which had

been developing. The report for 1920 shows that the fees were about ten per cent of the total cost of the office. The State Auditor's report for 1922 shows the total cost of the office to be $531,163.30 while the office fees collected amounted to $44,734.20 — less than ten per cent.[706]

The sheriff is not required to pay into the county or report upon the amounts allowed him by the county for the care and keeping of prisoners, but of all other fees he must keep a record in what is known as the "fee book", which becomes a part of the permanent county record. At the end of each quarter a report must be made to the county board of supervisors and all fees collected during the quarter must be turned over to the county treasurer.[707] The State checkers' reports in the State Auditor's office for 1922 shows that all receipts of the office except mileage expenses, board of prisoners, and care for prisoners were paid either to the clerk of the court or the county treasurer by ninety-seven of the ninety-nine sheriffs.

Ninety-four sheriffs were reported as having rendered bills for the boarding and care of prisoners, three made no report, one reported no jail, and in one case the prisoners were fed by a private party. The reports of the county examiners further revealed the fact that ninety-seven of the ninety-nine sheriffs rendered bills for expenses in criminal processes and for taking prisoners to the penitentiary or other State institutions, but only twenty-six of them had the bills fully itemized, verified, and accompanied by vouchers. Two of the sheriffs did not even keep a fee book of any kind, twenty-four kept no cash book, twenty-four did not keep a separate record of foreign fees received, while three kept no record of foreign fees at all. Eight were reported as retaining compensation other than salary, mileage, and expenses connected with the care and keeping of prisoners. The State checkers expressed the opinion that this was due to ignorance on the part of certain sheriffs relative to the disposition of foreign fees and not an attempt upon their part to evade the law by retaining as a part of the emoluments of office fees that did not belong to them.

The State Auditor's report for 1922 shows that the average salary paid the sheriff in Iowa is $1937.57. The average salary of the first deputy is $1293.86, while for all other deputies the average paid per county is $2106.36. The average amount per county collected by the sheriff for the feeding and care of prisoners is $672.42, while the average amount per county collected by the sheriff for mileage is $759.32. The total cost of the office in Iowa is a little less than one half million dollars, less than ten per cent of which is covered by fees, leaving an average net cost per county of $4913.42.[708] These statistics, however, are incomplete since there is no record of all the receipts and expenditures of the office. Where the costs are paid by the county fees are sometimes not even made a matter of record at all.

Jail Administration. — The sheriff has charge of the county jail. The Superintendent of the Society for the Friendless reported for February, 1923, a total jail population in Iowa of five hundred and sixty-one, one hundred and eight less than that for the previous year at the same time. These prisoners are cared for by the sheriff or his deputy.

The majority of counties furnish the sheriff with a residence in or next to the county jail. Few counties are large enough to warrant the county board of supervisors in making provision for a jailer and the actual duty falls upon the sheriff or some members of his family. Where the prisoners are few in number they are sometimes maintained by the sheriff at a loss while in counties with a large jail population the sheriff is often able to increase the emoluments of his office through the administration of the jail.

Some of the sheriffs are not as particular about keeping the jail calendar as the law requires. In 1923 the State checkers reported that four sheriffs kept no calendar at all while twelve of them kept no record of the date and time of day that each prisoner was confined and discharged.

The treatment of prisoners is on the whole very good — as good as the conditions will permit. No attempt is generally made to work the jail prisoners, except in and about the jail

itself. The small number in the average jail makes it impossible to work out any systematic way of employing prisoners. The report for February, 1923, shows that twenty-one counties furnish eighty-five per cent of the total jail population. Thirty-eight counties reported no prisoners at all, while fourteen counties reported only one prisoner each and ten other counties reported two prisoners each.[709]

Service and Return of Process. — Actual administration in the service and return of process has been very much simplified by improved methods of transportation and communication. For making trips out of the State to secure and bring back prisoners under extradition proceedings and for making long trips within the State railroads are used almost exclusively. Within the county the automobile, the telephone, and the postal system have made it possible to complete the service of process more quickly and with greater ease. The use of these improvements, however, has created some complicated problems in administration.

In some instances the sheriff gets his actual expenses for making a trip while in others he gets the ten cents per mile mileage fee. The county can not afford to allow him to hire an automobile for the purpose of making trips the expenses of which are borne by the county. There are two alternatives, both of which are used and neither of which is satisfactory: the county may buy the car and keep it up, or it may allow the sheriff a definite amount per month for the use of his own car. The chief difficulty was explained by one of the sheriffs somewhat as follows: a sheriff's automobile may be used for three things — the service of process the expenses of which are borne by the county, the service of process for which there is allowed a mileage fee, and for pleasure, and as yet, no way has been discovered of dividing the gasoline and other expenses into three proportionate parts.

Personal service is generally required by law; but here again, the law does not take into account the possibilities of the telephone. Even where personal service is required, as in serving subpoenas for witnesses, the sheriff generally goes to the tele-

phone, calls the witness up and asks him if he will accept service. The witness later comes into the sheriff's office and the service is completed. The practice of collecting mileage fees is not uniform. Some sheriffs collect the mileage as though the actual trip had been made while others collect only twenty cents for completing service in this manner.

In securing jurors the sheriff sends to each person whose name has been drawn for jury service a notice through the mail with a return card to be signed and sent in by the individual accepting service. The mileage fee, however, does not complicate the situation here, as only the actual and necessary expense may be collected.

The Sheriff's Relation to the City Police. — One of the most complicated problems in the administration of the sheriff's office concerns the working relation between its force and the police forces of cities within the county, for the jurisdiction of the sheriff includes also the jurisdiction of the municipal police. In the smaller towns and villages friction seldom arises but in the larger towns and cities it is more frequent. This is particularly true when the municipal affairs are controlled by one political party and the sheriff's office by another.

Generally a definite understanding as to the working relation of the two forces is arrived at between the sheriff and the chief of police. The sheriff usually agrees not to act as peace officer within the city limits unless an offense is committed in his presence and the police force agrees to confine its activity to the city. Even with such an understanding friction sometimes arises because of complaints that are made to the sheriff stating that the city police force refuses to act. The sheriff feels that he must do something about these complaints. Not knowing the conditions and circumstances he may do the wrong thing and thus not clear the matter up. The city authorities may have had the case under observation, waiting for a more favorable moment, but the sheriff can not wait, for if he does the statement is sure to come out in the next campaign that he refused to act when called upon. Sometimes there is joint action on the part

of the sheriff's force and the city's force, each aiding the other when called upon but such action depends wholly upon amicable relationships and not upon any legal requirement.

Succession in Office. — When the retiring sheriff goes out of office he may complete the service and return of all process then in his hands, or he may turn everything over to the incoming sheriff and sever all connections with the office. It would be desirable to have the old sheriff "clean up" whenever possible, as this would lessen the complications for the incoming inexperienced officer. This, however, does not seem to be the rule. The outgoing sheriff is often a rival of the successful candidate and is not anxious to render special assistance to his rival. He, therefore, turns all of the business of the office over to the new sheriff and leaves him to shift as best he can.

The new sheriff is usually willing and sometimes anxious to retain in his service at least one of the deputies of his predecessor, in order that the shift may be made with as little friction as possible. This can not be done, however, in cases where there was extreme dissatisfaction with the old regime. The voters demand a complete "clean up" and they are not satisfied until every deputy of the old sheriff is removed.

SUGGESTED REFORMS

Reforms in any institution should not be sought nor introduced unless there is some real need for them. The first reform that suggests itself in the office of sheriff has to do with the manner of selecting the sheriff. Although the sheriff's office is one of the most visible of all county offices and one of the most sought after — which increases the responsibility of the officer to the electorate — it is not the kind of responsibility which makes for efficient administration. The sheriff is an administrative officer whose duties are almost wholly ministerial. For this reason it is often suggested by students of local government that he should be appointed rather than elected.

Two general plans of appointment have been suggested: appointment by the district judge and appointment by a State

chief of police. In regard to the first plan it may be contended that since the sheriff is a ministerial officer of the district court, he should be appointed by the judge and be made responsible to the court. There is some reason to this contention, but the sheriff is more than a ministerial officer of the court. He is the conservator of peace, the chief law enforcing officer of the State in his county. Appointment of the sheriff by the district judge would not give effective State supervision or, outside of the power of the Attorney General to prosecute removal causes, any means of exercising State control.

The office of sheriff, with the incumbent as a functionary of the court, might well be retained, and in this case it would be filled by election or by appointment by the district judge. The office of sheriff, with its incumbent as a peace officer, however, should become a part of a State police system.

At the head of this system there should be a chief of police appointed by, and responsible to the Governor of the State. This officer should be charged with the appointment and oversight of officers in the county who would perform the present peace functions of the sheriff. There should be at least one local officer in each county who should be required to reside in the county and whose activities should mainly be confined therein. A supplementary force entirely mobile should be maintained to aid any county peace officer at his request or to send into any county upon the motion of the State chief of police. The chief objection to this plan is that it is too highly centralized and militaristic. Recent attempts to enforce prohibition laws and deal with labor disturbances, however, are evidences enough of the failure of the present irresponsible disintegrated system and a uniform law enforcement can best be secured under a centralized system of the nature herein proposed.

The management of jails by the sheriff is on the whole unsatisfactory. This is not so much the result of any fault of the sheriff but the result of a faulty system. Aside from the fact that the sheriff is not a criminologist he does not have time to give a great deal of attention to the care and management of

jails. The average number of prisoners in the county jail is between five and six and this is not a sufficient number to justify the employment of a special jailer.

The county jail, however, can not be abolished unless something is created to take its place. The most feasible plan would be to establish regional jails or State work farms. These institutions should be administered by the State and not by the county, but a sufficient number should be established and in such locations that one would easily be accessible to each county seat. The United States congressional district could be used as a basis giving a total of eleven institutions for the State. If this number should prove insufficient the State judicial district could be used raising the number to twenty-one. If neither of these should prove satisfactory a third plan would be to create special districts.

The establishment of such regional institutions would have many advantages. In the first place, it would give opportunity for more scientific management because these regional prisons would be large enough to warrant the employment of trained supervisors. In the second place, it would give an opportunity for the working of the long time jail prisoners who are now sentenced from one month to one year in jail, many of them to "hard labor". The county jail affords no work for the prisoners and the time is spent in playing cards, telling stories, reading cheap literature, or doing nothing except eat and sleep at the expense of the county. From the standpoint of the prisoners themselves it is better that they should be employed. Finally, it would be less expensive. The institutions would not perhaps be self-supporting because the character of the prisoners and length of service would not permit the operation of highly specialized industries, but with such industries as might be conducted the financial liability of the institutions would not be as great as under the present system.

The question at once arises, what is to be done with the short time prisoners and those who are committed to await trial or give testimony as witnesses? It would not be feasible to take

care of them at the State district farm. Two solutions offer themselves: the old county jails could be maintained for this purpose, or the city jails could be made use of by the county. The latter plan is preferable, because it saves a duplication of jails in the county seat towns. Many of these are poor ones and ill kept but with county aid they could be made adequate.

Aside from the adjustments that would be necessary after instituting the major reforms suggested, one or two minor reforms seem desirable. In the first place, there seems to be no good reason why the sheriff should be called upon to execute the death penalty. All prisoners condemned to death are confined in the State penitentiary for at least one year before the execution takes place. It actually takes place within the prison walls, and should be carried out by the prison authorities who would be required to make the proper report to the court having pronounced the sentence. In the second place, some reform should be instituted regarding condemnation procedure. The process by which property is taken is judicial and yet the courts have nothing to do with it except upon appeal from the decision of the sheriff's jury. This jury should be selected by the court, put in charge of the sheriff, and should report back to the court. All money received as the result of condemnation proceedings should be held by the county through its treasurer.

Finally, there is need for a revision of the list of fees. The allowance of eighty cents per day for care, keeping, and feeding of jail prisoners is inadequate except in places where the number of prisoners is comparatively large. The mileage fee of ten cents per mile is also inadequate, if reports are made strictly in accord with the spirit of the law. The fees of the office, which now go to the county, have undergone little change since the office was placed upon a salary basis. There should at least be more uniformity in the fees of the office. Sheriffs are agreed that it is little more trouble to serve one kind of process than another. As one sheriff expressed it "there is no reason why the fee for the service and return of notice should be fifty cents while that of a warrant is two dollars".

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[708] These figures are based upon the State Auditor's report for 1922 which report is made up from 1920 statistics.

[709] This statement is based upon a survey made by Charles Parsons, Superintendent of the Society for the Friendless.